SUPREME COURT, U. S.

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Nos. 944 and 972

In the Supreme Court of the United States

OCTOBER TERM, 1969

ROBERT CARTER, ET AL., PETITIONERS

v.

WEST FELICIANA PARISH SCHOOL BOARD, ET AL.

DERRY JEROME SINGLETON, ET AL., PETITIONERS

v.

JACKSON MUNICIPAL SEPARATE SCHOOL DISTRICT

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

ERWIN N. GRISWOLD,
Solicitor General

JERRIS LEONARD,
Assistant Attorney General

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In their present posture, these cases afford an opportunity for this Court to clarify its recent decision in *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19, with respect to the timing of school desegregation. We believe that question warrants plenary consideration here and, accordingly, join in urging that certiorari be granted.

The question is not without difficulty. On the one

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hand, the cases now before the Court can be viewed in isolation and each assessed individually. If that approach is taken—as it was in *Alexander* and by the Fourth Circuit in *Nesbit* v. *Statesville City Board of Education*, No. 13,229, decided December 2, 1969—the appropriate result in several of the school districts presently before the Court might be to order complete conversion to a unitary system, including merger of student bodies, by February 1, 1970. The government suggested below that the court might appropriately order immediate implementation in those relatively small systems where an acceptable desegregation plan was already on file.[1] At the same time, it is manifestly impractical to complete the process by that date in the larger districts where no plan has yet been devised, much less in those many areas where litigation has not even begun.[2]

The court below determined upon a broader approach. Looking beyond the cases immediately before it, the Fifth Circuit—acting *en banc* and unanimously—adopted a uniform rule for "these and all

[1] The United States filed one consolidated brief in these cases, heard together by the court of appeals *en banc*. In those cases where the record contained desegregation plans drawn by educators the United States suggested that the court might appropriately order such plans to be implemented immediately. In other cases (such as the Bibb County, Georgia case), where such plans do not exist, we suggested that "the district court be directed to order the board to seek expert assistance from HEW in the formulation and prompt implementation of a full desegregation plan" (p. 63 of U.S. brief).

[2] Approximately 315 school systems in the Fifth Circuit did not have terminal plans for the 1970–71 school year when *Singleton* was decided.

other school cases now being or which are to be considered" (Pet. No. 944, 2a), and, accordingly adopted September, 1970, as the final date by which all systems within the circuit must achieve full desegregation. Even more recently, three district judges, sitting together, decreed the same deadline uniformly for 81 school systems in Georgia. *United States* v. *Georgia*, No. 19,972, N. D. Ga., decided December 17, 1969. We suggest the same formula can be made applicable to all such school districts not now committed to an earlier terminal date.

The advantages of this approach are evident. The imposition of a uniform deadline minimizes the need for hearing and deciding the timing issue on a case-by-case, system-by-system, basis. It puts all school boards on notice that there will be no justification for further delay, and gives them sufficient time so that no excuse can be a legitimate one. It gives the Executive Branch of the Federal Government and private plaintiffs sufficient time to require all school districts, through the judicial and the administrative processes, to comply with the deadline. It gives the educators sufficient time to develop the options available in restructuring school systems, and then actually to effectuate the necessary changes.

If this Court now endorses the schedule fashioned by the Fifth Circuit as uniformly applicable to all dual school systems, the United States will focus its resources toward making that deadline a reality. Specifically, the government will institute suits against individual systems, groups of systems, or states and

state officials, as appropriate, to bring remaining school districts under orders of court, following the pattern of the recent *Georgia* case, *supra*, and will take all necessary steps to insure compliance with the resulting decrees.

We recognize that any uniform timetable will be undiscriminating, and may appear to accord particular districts too much or too little delay, and we are sensitive of the charge that such a solution will sacrifice the rights of some school children for the remainder of this school year. But, in our view, it represents a surer path to a prompt end of the problem than the vagaries of case-by-case litigation. There is, moreover, doubtful equity in an approach that imposes deadlines solely on the fortuity of the posture of a given case in the courts. If, as we now represent to the Court, the remaining uncommitted dual school systems can be required to complete the desegregation process by September, 1970, it will be tragically late, but a difficult and substantial accomplishment will have been won.

We join in urging that certiorari should be granted.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JERRIS LEONARD,
Assistant Attorney General.

DECEMBER 1969.